

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HANOVER POLICE ASSOCIATION :
v. : Case No. PF-C-12-98-W
HANOVER TOWNSHIP :

PROPOSED DECISION AND ORDER

On August 13, 2012, James Geho (Geho) and the Hanover Police Association (Association)¹ filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Hanover Township (Township) violated sections 6(1)(a), (b), (c) and (d) of the Pennsylvania Labor Relations Act (PLRA) as read *in pari materia* with Act 111 of 1968 (Act 111) by interfering with Geho's rights under the PLRA and Act 111.

On September 5, 2012, the Secretary of the Board notified Geho that it would be necessary for him to amend his charge to provide a copies of letters to support his charges.

On September 24, 2012, Geho filed an amended charge of unfair labor practices, attaching copies of the two letters the Secretary of the Board requested. On October 22, 2012, the Secretary of the Board issued a complaint and notice of hearing assigning the case to a conciliator to resolve the matter without a hearing and establishing April 17, 2013, in Pittsburgh as the time and place of hearing, if necessary. The hearing was necessary and was held as scheduled. The parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Hanover Township is an employer within the meaning of Section 3(c) of the PLRA, with its address located at 11 Municipal Drive, Burgettstown, PA 15021. (N.T. 18-19)
2. Hanover Police Association is a labor organization within the meaning of Section 3(f) of the PLRA, with its address located at c/o Kent Mitchell, 859 Phelps Road, Bulger, PA 15019. (N.T. 18-19)
3. On September 6, 2007, the Board certified the Association as the exclusive representative of a bargaining unit that includes all full-time and regular part-time police officers employed by the Township. (Case No. PF-R-06-112-W)
4. James Geho was the chief of police of the Township police department from 2005 to the present. He was also a member of the Association. (N.T. 18-20)
5. At this hearing the Association produced copies of three unfair labor practices it filed with Geho's assistance. The cases were PF-C-11-98-W; PF-C-11-114-W and PF-C-11-167-W. (N.T. 27, 36, Complainant's Exhibits 5, 6 and 7)
6. On April 2, 2012, Dennis Makel, Esquire, the Township's solicitor, sent a letter to Geho informing him that an investigation of 22 incidents had brought forth evidence to support four (4) charges against Geho: willful misconduct materially detrimental to Hanover Township; conduct unbecoming an officer;

¹ The Board processed the charge with only the Association as the complainant.

insubordination and "violation of your duties as Chief of Police." The letter informed Geho that he was to appear at a pre-disciplinary conference on April 10, 2012 at Makel's law office and "that discipline may or may not be imposed, depending on the outcome of the pre-disciplinary conference." (N.T. 22, 27, Complainant's Exhibit 1)

7. One of the incidents listed in the April 2 letter was that Geho "filed multiple unfounded labor charges against the Township." (N.T. 22, 27, Complainant's Exhibit 1)
8. Attorney Christopher P. Furman, an associate of Attorney Makel, drafted the April 2 letter. (N.T. 55-59)
9. Sometime between April 2, and July 2, 2012 Attorney Furman met with Geho in the Makel and Associates law office for a pre-disciplinary conference to discuss the letter. Furman testified that the meeting was not on April 10 as had been intended in the April 2 letter. (N.T. 47, 58, 59-60)
10. On July 2, 2012, Attorney Furman wrote to Geho "This is to inform you that the investigation regarding the charges" against you is complete." The letter also notified Geho of a hearing scheduled for July 24 at the Township Municipal Building before the Board of Supervisors. Enclosed with the letter was a report of Ron Levi, "which is being provided to you in advance of the hearing so that you may have a reasonable amount of time to prepare your defense." (N.T. 24, 27, Complainant's Exhibit 2)
11. After July 2, Furman received a call from Attorney Colleen Ramage Johnston, counsel for Geho. During that call, Furman informed Johnston that the April 2 letter's reference that Geho "filed multiple unfounded labor charges against the Township" was a mistake. Furman also informed Johnston that Geho's filing of unfair labor practice charges against the Township would not be included in the charges against him. (N.T. 58)
12. On August 23, 2012, Furman wrote to Johnston, that "the inclusion of unfair labor charges in the list was an inadvertent mistake and that it was withdrawn." The letter also stated, "Accordingly, there is no basis for your client's new charge [PF-C-12-98-W] and it should be withdrawn." (N.T. 25, 27, Complainant's Exhibit 3)
13. On August 28, 2012, Furman wrote to Attorney Johnston a revised "list of charges that was similar to the April 2 letter but without the reference that Geho "filed multiple unfounded labor charges against the Township." (N.T. 26, 27, Complainant's Exhibit 4)
14. On October 27, 2012 and November 17, 2012, the Township conducted **Loudermill**² hearings for Geho and presented evidence of misconduct. The Township provided Geho an opportunity to respond. (N.T. 45-47, Respondent Exhibit 1)
15. In the **Loudermill** hearings neither the Township nor its solicitor questioned Geho about the previous unfair labor practice charges, nor did the Township or its solicitor accuse Geho of misconduct based upon his filing of the unfair labor practice charge. (N.T. 45-47, Respondent Exhibit 1)
16. As of the date of this unfair labor practice hearing, the Board of Supervisors had not made a decision regarding Geho's employment with the Township. (N.T. 65-66)

² **Cleveland Board of Education v. Loudermill**, 470 U.S. 532 (1985) held that a public employer must provide a due process hearing for a public employe prior to termination.

DISCUSSION

The Hanover Police Association contends that on April 2, 2012, Hanover Township committed unfair labor practices under sections 6(1)(a), (b), (c) and (d) of the PLRA as read *in pari materia* with Act 111 when its solicitor sent Chief James Geho a letter informing him that he was being disciplined for several reasons, one being that he "filed multiple unfounded labor charges" against the Township. The alleged statutory violations of the PLRA will be discussed separately.

Section 6(1)(a) Allegation

Disciplining an employee for filing of an unfair labor practice charge is an unfair labor practice in itself under the clear wording of section 6(1)(d) of the PLRA:

It shall be an unfair labor practice for an employer

....

- (d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

43 P.S. 211.6(1)(d).

The Township's defense is that its solicitor mistakenly included a reference to Geho's filing of unfair labor practices in the 22 incidents in his April 2 letter that initiated the disciplinary process against Geho. Attorney Christopher P. Furman, the draftsman of the April 2 letter, testified that after the letter went out he recognized that it was a mistake to include the reference to the filing of unfair labor charges. He testified that he informed Geho of the mistake. Geho testified that Furman never told him it was a mistake. Furman testified that he later informed Geho's counsel of the mistake. In any event, the allegation in the letter that Geho "filed multiple unfounded labor charges" was not used as an incident in the **Loudermill** pre-termination hearings the Township conducted on October 27 and November 17, 2012. Furman also testified that it would be a violation of law to use Geho's filing of unfair labor practice charges as a reason to discipline him.

The inadvertent inclusion of Geho's filing of unfair labor practice charges as a reason for discipline can still be the basis for finding a section 6(1)(a) violation. As the Board stated in **Upper Gwynedd Township**, 33 PPER ¶ 33133 (Final Order, 2002):

"The Board will find an independent violation of this provision if the actions of the employer, in light of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employees have been shown, in fact, to have been coerced. The standard for determining the existence of a Section 6(1)(a) violation does not require proof of anti-union motivation and even an inadvertent act by an employer may interfere with, restrain or coerce employees in the exercise of protected rights."

33 PPER at 306 (citations omitted).

Under the test for judging a section 6(1)(a) charge, I must conclude that the April 2 letter could be seen by Geho or any other employee as coercive. For some period of time after Geho received the April 2, 2012 letter, he had reason to believe that he was being disciplined for, among other reasons, filing unfair labor practice charges. Although the Township solicitor later informed his counsel that filing of unfair labor practice charges would not be used as a reason to discipline him, the letter's content hung over Geho's head until that time. This would have a tendency to coerce Geho, or any other reasonable person, from exercising their protected rights during that period of time. By this letter, the Township violated section 6(1)(a) of the PLRA.

Section 6(1)(b) Allegation

An employer commits an unfair labor practice under section 6(1)(b) if it creates a company union. **Paint Township**, 26 PPER ¶ 26169 (Proposed Decision and Order 1995); **Kennett Square Borough**, 25 PPER ¶ 25179 (Proposed Decision and Order 1994). A company union is created when the employer provides assistance to or is involved with a labor organization to the point that the labor organization "is indistinguishable from the employer." **Girard School District**, 38 PPER 128 at 366 (Final Order 2007) (construing analogous provisions of the PERA).

On its face the specification of charges does not state a cause of action under section 6(1)(b). There is no allegation that the Township has created a company union. Thus, to the extent that the charge alleges a violation of section 6(1)(b), it is dismissed as a matter of law. Furthermore, no factual proof of such allegation was offered into evidence in this case, so the charge alleging a violation of section 6(1)(b) of the PLRA is dismissed for that reason as well.

Section 6(1)(c) Allegation

An employer commits an unfair labor practice under section 6(1)(c) if it discriminates against an employe for having engaged in an activity protected by the PLRA as read *in pari materia* with Act 111. **Duryea Borough Police Department v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004). If the charging party presents a prima facie case during its case-in-chief, a charge under section 6(1)(c) is to be sustained unless the employer shows that it would have taken the same action even if the employe had not engaged in the protected activity. **Brentwood Borough**, 35 PPER 112 (Final Order 2004), **citing Perry County v. PLRB**, 634 A.2d 808 (Pa. Cmwlth. 1992). The discriminatory motivation creates the offense. **Id.** A valid non-discriminatory reason for the employer's action may rebut any inference that the employer was discriminatorily motivated. **Duryea Borough Police Department, supra.**

The present case is built around offensive language in the April 2, 2012 letter to Geho. Because motive is essential in proving a section 6(1)(c) charge, the Association must prove that this letter was sent with the intention of putting that language in the letter. **Duryea Borough Police Department, Id.** Attorney Furman testified credibly that his inclusion of the language was a mistake and that he acknowledged that mistake to Geho's attorney. Therefore, it will not be concluded that the inclusion of that language was motivated by animus against Geho's exercise of protected activity. Absent proof of this motive, the section 6(1)(c) charge will be dismissed.

Section 6(1)(d) Allegation

An employer commits an unfair labor practice under section 6(1)(d) if it discriminates against an employe for having filed a charge with the Board. **Commonwealth of Pennsylvania, Pennsylvania State Police**, 42 PPER 46 (Final Order 2011). "The analysis under Section 6(1)(d) mirrors the analysis of a charge under Section 6(1)(c)." **Id.** at n. 3.

Because the analysis for a Section 6(1)(d) allegation mirrors that of the Section 6(1)(c) allegation, this charge is also dismissed.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. Hanover Township is an employer under section 3(c) of the PLRA as read *in pari materia* with Act 111.
2. Hanover Police Association is a labor organization under section 3(f) of the PLRA as read *in pari materia* with Act 111.

3. The Board has jurisdiction over the parties.
4. The Township has committed unfair labor practices under section 6(1)(a) of the PLRA as read *in pari materia* with Act 111.
4. The Township has not committed unfair labor practices under sections 6(1)(b), (c) and (d) of the PLRA as read *in pari materia* with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read *in pari materia* with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA.
2. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:
 - (a) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and
 - (b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-ninth day of August, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner